
To: Allegro Multimedia, Inc. (mcs@jaburgwilk.com)
Subject: TRADEMARK APPLICATION NO. 78832702 - WIZARD TUNES - N/A
Sent: 8/28/2007 7:42:29 PM
Sent As: ECOM111@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/832702

MARK: WIZARD TUNES

CORRESPONDENT ADDRESS:

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RESPOND TO THIS ACTION:

<http://www.uspto.gov/teas/eTEASpageD.htm>

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: Allegro Multimedia,
Inc.

**CORRESPONDENT'S
REFERENCE/DOCKET NO:**

N/A

CORRESPONDENT E-MAIL ADDRESS:
mcs@jaburgwilk.com

OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

ISSUE/MAILING DATE: 8/28/2007

TEAS PLUS APPLICANTS MUST SUBMIT DOCUMENTS ELECTRONICALLY OR SUBMIT FEE: TEAS Plus applicants should submit the following documents using the Trademark Electronic Application System (TEAS) at <http://www.uspto.gov/teas/index.html>: (1) written responses to Office actions; (2) preliminary amendments; (3) changes of correspondence address; (4) changes of owner's address; (5) appointments and revocations of attorney; (6) amendments to allege use; (7) statements of use; (8) requests for extension of time to file a statement of use, and (9) requests to delete a §1(b) basis. If any of these documents are filed on-paper, they must be accompanied by a \$50 per class fee. 37 C.F.R. §§2.6(a)(1)(iv) and 2.23(a)(i). Telephone responses will not incur an additional fee. NOTE: In addition to the above, applicant must also continue to accept correspondence from the Office via e-mail throughout the examination process in order to avoid the additional fee. 37 C.F.R. §2.23(a)(2).

Responsive to the request for reconsideration filed August 8, 2007.

The trademark examining attorney has carefully reviewed the request for reconsideration and is not persuaded by applicant's arguments. No new issue has been raised and no new compelling evidence has been presented with regard to the points at issue in the final action. TMEP §715.03(a). Accordingly, applicant's request for reconsideration is denied and the final refusal is continued. 37 C.F.R. §2.64(b); TMEP §715.04.

The application file will be returned to the Trademark Trial and Appeal Board for resumption of the appeal.

The arguments and evidence already of record are incorporated by reference, particularly that showing "wiz" and "wizard" have the same meaning.

As a general rule, consumers are more inclined to focus on the first word, prefix or syllable in any trademark or service mark. See *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F. 3d 1369, 1372, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005); see also *Presto Prods., Inc. v. Nice-Pak Prods., Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988) ("it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered" when making purchasing decisions). This is especially true when, as in this instance, the remainder of the mark is descriptive or generic.

Again, applicant references pending applications and a single registration without making them of record. The Trademark Trial and Appeal Board does not take judicial notice of registrations, and the mere submission of a list of registrations does not make these registrations part of the record. *In re Delbar Products, Inc.*, 217 USPQ 859 (TTAB 1981); *In re Duofold Inc.*, 184 USPQ 638 (TTAB 1974). To make registrations proper evidence of record, soft copies of the registrations or the complete electronic equivalent (*i.e.*, printouts of the registrations taken from the electronic search records of the United States Patent and Trademark Office) must be submitted. TMEP §710.03. See *In Re JT Tobacconists*, 59 USPQ2d 1080, 1081 n. 2 (TTAB 2001); *In re Styleclick.com Inc.*, 57 USPQ2d 1445, 1446 n. 2 (TTAB 2000); *Raccioppi v. Apogee Inc.*, 47 USPQ2d 1368, 1370 (TTAB 1998); *In re Volvo Cars of North America Inc.*, 46 USPQ2d 1455 (TTAB 1998); *In re Broadway Chicken Inc.*, 38 USPQ2d 1559, 1560 n.6 (TTAB 1996); *Weyerhaeuser Co. v. Katz*, 24 USPQ2d 1230, 1231-32 (TTAB 1992). This precedent does not even discuss pending applications, a telling omission inferring that pending applications are not acceptable evidence, even if properly on record.

/Hannah M. Fisher/
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RESPOND TO THIS ACTION: If there are any questions about the Office action, please contact the assigned examining attorney. A response to this Office Action should be filed using the Office's Response to Office action form available at <http://www.uspto.gov/teas/eTEASpageD.htm>. If notification of this Office action was received via e-mail, no response using this form may be filed for 72 hours after receipt of the notification. **Do not attempt to respond by e-mail as the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

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Attachments:

IMPORTANT NOTICE
USPTO OFFICE ACTION HAS ISSUED ON 8/28/2007 FOR
APPLICATION SERIAL NO. 78832702

Please follow the instructions below to continue the prosecution of your application:

VIEW OFFICE ACTION: Click on this link http://portal.uspto.gov/external/portal/tow?DDA=Y&serial_number=78832702&doc_type=OOA&mail_date=20070828 (or copy and paste this URL into the address field of your browser), or visit <http://portal.uspto.gov/external/portal/tow> and enter the application serial number to access the Office action.

PLEASE NOTE: The Office action may not be immediately available but will be viewable within 24 hours of this notification.

RESPONSE MAY BE REQUIRED: You should carefully review the Office action to determine (1) if a response is required; (2) how to respond; and (3) the applicable **response time period**. Your response deadline will be calculated from 8/28/2007.

Do NOT hit "Reply" to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System response form at <http://www.uspto.gov/teas/eTEASpageD.htm>.

HELP: For *technical* assistance in accessing the Office action, please e-mail TDR@uspto.gov. Please contact the assigned examining attorney with questions about the Office action.

WARNING

1. The USPTO will NOT send a separate e-mail with the Office action attached.
2. Failure to file any required response by the applicable deadline will result in the **ABANDONMENT** of your application.